S.B. Civil Writ Petition NO.2486/2005
Bajrang Singh
Vs
Hanuman & Ors.

DATE OF ORDER : - 3.5.3005

HON'BLE MR. PRAKASH TATIA,J.

Mr.NK Goyal, for the petitioners.
Mr.PR Mehta, for the respondents.

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Heard learned counsel for the parties.

The petitioner aggrieved against the order of the trial court dated 7.1.2005 by which the trial court granted mandatory injunction for opening the way under Order 39 Rule 1 and 2 CPC. The appeal against the said order of the trial court dated 7.1.2005 was dismissed by the appellate court vide order dated 21.4.2005. The petitioner, therefore, has preferred this writ petition to challenge the two orders.

According to learned counsel for the petitioner in view of the specific provision of sub-section (1) of Section 251 of the Rajasthan Tenancy Act, the order to open a way for an agricultural land can be passed only by Tehsildar and, therefore, the trial court had no jurisdiction even to entertain the suit in view of the entry made in Schedule (III) of Rajasthan Tenancy Act, which bars jurisdiction of the

Civil Court in a matter where appropriate order can be passed by the revenue authorities.

It is also submitted that the trial court as well as the appellate court failed to appreciate the fact that there are alternate ways available to the plaintiffs, but those facts were not considered by the two courts below and the courts below granted the mandatory injunction, which can be granted in rarest of rare cases.

I considered the submissions of learned counsel for the petitioner and perused the impugned orders. The contentions of learned counsel for the petitioner that the civil court had no jurisdiction to pass the impugned order of mandatory injunction or the suit was not maintainable in view of sub-section (1) of Section 251 of the Rajasthan Tenancy Act are concerned is having no legal basis in view of the fact that the powers given to the Tehsildar under Section 251(1) of the Rajasthan Tenancy Act are for providing immediate relief and for that purpose summary procedure is prescribed whereas sub-section (2) of Section 251 of the Rajasthan Tenancy Act clearly provides that for establishing of easementary right even for the relief of way, the party may get declaration of his said right from the civil court only. Even if Tehsildar passes any order, the other aggrieved party can file the suit for declaration of his easementary right as provided under sub-section

(2) of Section 251. Therefore, I do not find any substance in the contention raised by the learned counsel for the petitioner.

So far as contention of the petitioner that the courts below committed serious illegality in passing the order of mandatory injunction because it will be a final relief in the suit after declaration of the easementary right by the trial court is concerned, the mandatory injunction can be granted to the extent of final relief in a matter where the question of way is involved. The two courts below carefully considered the facts of the case, which is apparent from the orders passed by the two courts below and the Commissioner report was also considered and, thereafter, considering various affidavits filed by the parties and the Photographs, the trial court observed that the way is there and it has been obstructed. The trial court very specifically took note of the contention of the petitioner about the alternate way and, thereafter, rejected the contention by specifically saying that in the opinion of the court, no other way is available.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-